

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Richard Leo Occhino,

File No. 19-cv-2546 (ECT/LIB)

Plaintiff,

v.

**ORDER**

Geo. Sherman and Assoc.; Hanft Fride,  
P.A.; Brent Malvick; Holly LaBoone Haller;  
John B. Schulte; State of Minnesota;

Defendants.

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Plaintiff Richard Leo Occhino commenced this action pro se by filing a complaint [ECF No. 1] and an application to proceed *in forma pauperis* (“IFP”) [ECF No. 2]. Occhino has, in addition, filed numerous letters and exhibits [ECF No. 3–8, 10–25, 29–33, 36–37, 39–44, 47], several informal requests [ECF No. 26–28], a motion to appoint counsel [ECF No. 9, *denied* ECF No. 34], and several motions to compel [ECF No. 45–46]. Occhino’s complaint generally concerns an eviction proceeding brought against him in Minnesota state court in late 2018 that was stayed and later expunged. *See* Complaint at 3–4; December 2018 Order [ECF No. 4].

The case is before the Court on a Report and Recommendation (“R&R”) [ECF No. 35] issued by Magistrate Judge Leo I. Brisbois. Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), Magistrate Judge Brisbois recommends dismissing Occhino’s claims against the State of Minnesota without prejudice for lack of subject-matter jurisdiction (R&R at 6), dismissing Occhino’s claims against the other defendants without prejudice for failure to state a claim

upon which relief may be granted (R&R at 7–12), and denying his IFP application (R&R at 14).

Occhino filed objections to the R&R. ECF No. 38. Occhino’s objections are not clear, but he seems to disagree with Magistrate Judge Brisbois’s observation that Occhino’s exhibits show that Occhino vacated his apartment voluntarily and thus was not evicted. *Id.*; see R&R at 14 n.8. Occhino’s objections do not address Magistrate Judge Brisbois’s conclusions about the lack of subject-matter jurisdiction over his claims against the State of Minnesota or the pleading deficiencies of his complaint as against the other Defendants. See R&R at 6–13.

Because Occhino has objected, the Court is required to review the R&R de novo pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b)(3). The Court has undertaken that de novo review and concludes that Magistrate Judge Brisbois’s analysis and conclusions regarding the substance of Occhino’s claims are correct. The R&R will be accepted with the modification that Occhino’s claims against Defendants other than the State of Minnesota will be dismissed with prejudice. Because the action will be dismissed, the motions Occhino has filed since the R&R was received will also be denied.

Therefore, based upon all of the files, records, and proceedings in the above-captioned matter, **IT IS ORDERED THAT:**

1. The Objections to the Report and Recommendation [ECF No. 38] are **OVERRULED**;

2. The Report and Recommendation [ECF No. 35] is **ACCEPTED** as modified herein;

3. Occhino's claims against Defendant State of Minnesota are **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction;

4. Occhino's claims against Defendant State District Court Referee John Schulte are **DISMISSED WITH PREJUDICE**;

5. Occhino's claims against Defendants Hanft Fride, P.A., Holly Laboon Hallar, and Brent Malvick are **DISMISSED WITH PREJUDICE**;

6. Occhino's claims against Defendants Geo. Sherman and Associates and "Duluth Management at Greysolon Plaza" are **DISMISSED WITH PREJUDICE**;

7. Occhino's Application to Proceed in District Court Without Prepaying Fees or Costs [ECF No. 2] is **DENIED**; and

8. Occhino's Motions to Compel [ECF No. 45–46] are **DENIED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: December 19, 2019

s/ Eric C. Tostrud

Eric C. Tostrud

United States District Court